



NORTH DAKOTA 2015 CORPORATE INCOME TAX

RYAN RAUSCHENBERGER, TAX COMMISSIONER

FORM 40
FORM 40-UT
FORM 40-ES

Dear Taxpayer,

There is no doubt that North Dakota has one of the best business environments in the nation. In 2014:

- Forbes ranked North Dakota as the second best state for business
- The Bureau of Economic Analysis ranked North Dakota #1 in Economic Growth in 2014
- North Dakota continues to rank among states with the lowest unemployment rate

On top of that, during the 2015 Legislative Session, North Dakota's top corporate income tax rate was lowered to 4.31%.

North Dakota's electronic filing is also growing with more than percent choosing to file through the Modernized E-File (MeF) platform. If you have not used e-file in the past, I encourage you to consider using MeF this year. To learn more about the MeF option, go to our website: www.nd.gov/tax.

As you get ready to file your North Dakota corporation income tax return, take a few minutes to be sure you are using the correct form:

- Corporations engaged in business in North Dakota or having sources of income from North Dakota must file a North Dakota Corporation Income Tax Return, Form 40.
- A corporation which files a Federal Form 1120S as a small business corporation must file a North Dakota Small Business Corporation Income Tax Return, Form 60.
- Financial institutions tax was repealed effective December 31, 2012. Financial institutions are subject to income tax and, based on the type of entity, must file the appropriate income tax return.
- A tax-exempt organization that files Federal Form 990-T to report its unrelated business taxable income and has income from North Dakota sources must file a North Dakota Corporate Income Tax Return, Form 40.

To learn more about North Dakota's taxes or to access various forms and publications, please visit our website at www.nd.gov/tax.

I invite you to let us know what you think we are doing well and what we can do to improve our service to you. Our phone number, address, and email information is found on the back of this booklet.

Thank you,

Ryan Rauschenberger,
Tax Commissioner

WWW.ND.GOV/TAX

• Download Tax Forms

• Make Payments

• Find Answers with our FAQs

• Email Additional Tax Questions to corptax@nd.gov

New for 2015

Lower Tax Rates

Effective for taxable years beginning after December 31, 2014, the tax rates have been reduced approximately five percent. The income tax brackets were not changed. The revised tax rates are:

\$	0	to	\$ 25,000	1.41%	of North Dakota Taxable Income
\$	25,000	to	\$ 50,000	\$ 352.50 + 3.55%	of amount over \$ 25,000
\$	Over 50,000			\$ 1,240.00 + 4.31%	of amount over \$ 50,000

If a corporation elects to use the water's edge method to apportion its income, the corporation is subject to an additional 3.5% on its North Dakota income.

Corporate Income Tax Credit Changes

- **Housing Incentive Fund Tax Credit**

The provisions of the Housing Incentive Fund tax credit program were reenacted for two more years – 2015 and 2016. The program is administered by the North Dakota Housing Finance Agency. The credit is equal to 100% of the amount contributed to the fund. There is a statewide cap of \$30 million in total credits for the 2015 and 2016 calendar years.

- **Credit for Charitable Contributions to Nonprofit Private Grade Schools**

Beginning with tax year 2015, a new income tax credit was enacted for charitable contributions made to nonprofit private grade schools (grades K through 8). The provisions of the credit are the same as those of the two existing credits for charitable contributions to nonprofit private high schools and colleges. The credit is equal to 20% of the contribution and limited to the lesser of \$2,500 or 20% of the corporation's tax liability. There are no carryover provisions for any portion of a credit that is unused for a tax year.

- **Automation Manufacturing Equipment Purchase Tax Credit**

Some of the provisions relating to the automation manufacturing equipment purchase tax credit have been changed. The tax credit was set to expire December 31, 2015, but has been extended for two additional years, through 2017. Also, beginning January 1, 2015, equipment that is purchased with capital lease will also be eligible for the credit. The statewide cap of allowable credits remains \$2 million for 2015 and was lowered to \$500,000 for each 2016 and 2017. Beginning January 1, 2015, changes were also made relating to administration of the statewide cap. If the statewide cap is met for any year, each taxpayer is allowed its share of annual credits on a proportionate basis. If the statewide cap is not met for any year, the amount of unused credits is rolled over and added to the available statewide credits for the following year.

- **Energy Device Investment Tax Credit**

The tax credit for the acquisition and installation of geothermal, solar, wind, or biomass energy devices expired on December 31, 2014. However, a separate provision for wind energy devices only was extended. Tax credit for a wind energy device may be earned for a device installed before January 1, 2017, if construction of the device commenced prior to January 1, 2015. Separately, the carryover provision for credits earned for wind energy devices installed after September 30, 2008, and before January 1, 2012, was extended from 20 years to 30 years.

For additional information regarding these credits as well as all other income tax credits, please refer to the 2015 North Dakota Corporate Income Tax Credits booklet located on our website.

Looking Ahead to 2016

Apportionment Formula - Weighted Sales Factor Election

Beginning with tax year 2016, a corporation may make an election to more heavily weight the sales factor of its apportionment factor. If no election is made, the standard equally-weighted three factor formula would still apply. The weighting that applies under the election is:

Tax years 2016 and 2017	- property 25%, payroll 25%, and sales 50%
Tax year 2018	- property 12.5%, payroll 12.5%, and sales 75%
Tax years 2019 and after	- sales 100% (no property or payroll factor)

Beginning with the tax year for which the election is made, the election is binding for five consecutive tax years. After five tax years, the election will lapse unless another five-year election is made. If a corporation that made an election does not make another election in the sixth year, it will be precluded from making an election for three year years before it may make a new election. The standard, equally-weighted three factor formula would apply to any year not included in a five-year election period. The election is not available to a passthrough entity.

Withholding of Income Tax on Certain Oil and Gas Royalties

The 2015 Legislature made changes to the program for income tax withholding on certain owners of North Dakota oil or gas royalty interests. Beginning with royalty payments made after December 31, 2015, income tax will be withheld at the rate of 0.75% less than the highest individual income tax rate, regardless of whether the royalty recipient is an individual, passthrough entity, or corporation. Starting January 1, 2016, the highest individual income tax rate is 2.90%, making the royalty withholding rate 2.15%. If a future legislature changes the top individual income tax rate, the royalty withholding rate will similarly change. Also beginning January 1, 2016, the withholding tax rate will be applied to the gross royalty instead of the net royalty amount.

Special Reminders

Tax Department's Website - www.nd.gov (New Look)

We encourage you to visit our website for additional information regarding tax credits, tax forms, news releases, or other information. Changes enacted by the 2015 North Dakota Legislature affecting corporate income tax were summarized in the June 2015 practitioners' income tax newsletter, which is available on our website.

Withholding of Income Tax on Certain Oil and Gas Royalties

Beginning January 1, 2014, certain owners of North Dakota oil or gas royalty interest are subject to income tax withholding on their royalty payments. The withholding requirement applies to royalty payments made to business entities (including corporations) with a commercial domicile outside North Dakota. Credit for the income tax withheld can be claimed on the income tax return. A Form 1099-MISC is required to substantiate the income tax withheld.

Note that a partnership may not withhold income tax on a corporate partner's distributive share of income from a partnership. If a partnership has improperly withheld income tax, the corporation cannot claim credit for the withheld tax on the Form 40. Instead, the partnership must correct its partnership return to not withhold income tax on the corporate partner.

Electronic Filing Attachments

The joint federal and state Modernized e-File (MeF) program continues to be available for electronically filing your original return. If you file your return electronically, any attachments or schedules that are not included with the software must be attached to the submission as a PDF. Examples of these PDF attachments might be a copy of Federal Form 7004, 1099-MISC, a schedule supporting the computation of a North Dakota tax credit, or a "pro forma" Federal Form 1120 to reflect the applicable state filing method.

Electronic Payment Options

Several options are available for making electronic payments for corporate tax. Estimated, extension, return, and account payments can be made electronically using an ACH credit, electronic check, debit card, or credit card. Additional information on each of these payment methods and the fees that apply can be found on our website. Note that ACH "debit" payments can only be made in conjunction with an electronically filed MeF return.

Disclosure of Disregarded LLCs

It is important that if a return includes one or more limited liability companies that are treated as disregarded entities and are doing business in North Dakota, that they be disclosed. Question #11 on page 2 of the Form 40 requires the attachment of a statement to identify these disregarded entities.

Water's Edge Filers

For a corporation that elects the water's edge filing method:

- The election is made by marking circle c. or c1. on page 1, line 1 of the Form 40.
- The election is binding for five consecutive years.
- Answer question #9 on page 2 of the Form 40.
- Complete Schedule WE on page 5 of the Form 40.
- Apply the 3.5% surtax on page 1, line 17 of the Form 40.
- In year 6, mark circle c. or c1. only if making a new five-year election.

General instructions

Who must file

Every corporation engaged in business in North Dakota or having income from North Dakota sources must file a North Dakota Corporation Income Tax Return, Form 40.

For example, a North Dakota Form 40 must be filed by:

- Corporations, including business trusts, associations, and joint-stock companies;
- Cooperative corporations distributing their net income through patronage dividends;
- Insurance companies conducting business activities not subject to a gross premiums tax;
- Tax-exempt organizations having unrelated business taxable income; and
- Organizations that anticipate receiving a tax exempt status notification from the IRS, but have not actually received such notification by the end of the taxable year.

Except as provided under "Exception for certain S corporations" below, a corporation that files Federal Form 1120S must file Form 60, North Dakota S Corporation Income Tax Return.

Exception for certain S corporations. An S corporation must file Form 40, North Dakota Corporation Income Tax Return, if all the following apply:

- The corporation is a bank or other financial institution that formerly was subject to the North Dakota financial institution tax under N.D.C.C. ch. 57-35.3 and filed Form 35 for tax years prior to 2013.
- The corporation made an election under N.D.C.C. § 57-38-01.35 to be taxed as a C corporation for the 2013 tax year and filed a 2013 and 2014 Form 40.
- The corporation's North Dakota net tax liability on the 2014 Form 40 (page 1, line 20) is zero and the corporation is not revoking the election, which is done by filing Form 60 for the 2015 year.

If this election is still in effect and the S corporation files a Form 40 for the 2015 tax year, the corporation must provide a statement to each individual shareholder containing information on the adjustments that will need to be made on the shareholder's North Dakota individual income tax return to remove the income and losses already taxed and deducted on the North Dakota corporation income tax return. For more information, see the *Income Tax Guideline: Adjustment For Income (Loss) From An S Corporation Electing To Be Taxed Under N.D.C.C. §57-38-01.35*.

Privacy Act Notification. In compliance with the Privacy Act of 1974, disclosure of a social security number or Federal Employer Identification Number (FEIN) on this form is required under N.D.C.C. §§ 57-01-15 and 57-38-32, and will be used for tax reporting, identification, and administration of North Dakota tax laws. Disclosure is mandatory. Failure to provide the social security number or FEIN may delay or prevent the processing of this form.

Due date

A calendar year corporation filing Form 40 must file on or before April 15 following the close of the calendar year.

A corporation reporting on a fiscal year basis must file on or before the 15th day of the fourth month following the close of the fiscal year. Use the 2015 Form 40 for fiscal years that begin in 2015 and end in 2016.

A cooperative must file on or before the 15th day of the ninth month following the close of the calendar or fiscal year. Answer "Yes" to Question #4 on page 2 of Form 40.

Tax-exempt organizations required to file an income tax return to report unrelated business taxable income must file a corporation income tax return on or before the 15th day of the fifth month after the tax year ends.

Short period return

A corporation required to file a federal short period return must file a North Dakota short period return for the same period. The North Dakota return must be filed by April 15th or by the date prescribed by the Internal Revenue Service, whichever is later.

See instructions for the North Dakota Form 40-ES for due dates of estimated payments on short period returns.

A corporation terminating as a Subchapter S Corporation during the year, or a corporation changing its annual accounting period, must annualize its North Dakota taxable income and prorate its state tax liability in the same manner as the federal tax liability is prorated.

Extension of time for filing

An extension of time to file a federal return is automatically accepted by North Dakota as an extension of time to file the state return. The state extension is for the same number of additional months as the federal extension. Attach a copy of the federal extension Form 7004 to the state tax return and mark the extension circle on page 1 of the Form 40. **The return will be processed as a delinquent return if a copy of the federal extension is not attached.**

If a federal extension is not obtained, or if an extension of time beyond the time period covered by a federal extension is needed, a North Dakota extension may be obtained by completing and filing North Dakota Form 101 prior to the due date of the return. This form may be obtained by contacting our office.

An extension of time to file a North Dakota return does not extend the time for payment of the tax, and extension interest at the rate of 12% per annum will apply to any payment made after the regular due date of the state tax return. Penalty does not apply to tax paid within the extension period.

Extension payments must be accompanied by Form 40-EXT identifying the name, address, and Federal Identification Number of the taxpayer. The form can be found on our website. Alternatively, a letter containing the above information along with a copy of the approved state extension of time to file may be submitted with the prepayment of tax due.

Payment of tax

If tax due (*including interest and penalty*) is less than \$5.00, payment need not be made. If tax is due, the total payment due must be paid at the time of, or before, the return is filed. Payment made by check should be made payable to the North Dakota State Tax Commissioner.

Payment may be made electronically using an ACH credit, credit card, debit card, or electronic check. To learn more, visit our website at www.nd.gov/tax. Click on Corporation Income, then Electronic Payment. Note that ACH "debit" payments are only allowed on electronically filed returns.

Payment in the form of a check drawn on an international bank, except Canada, cannot be accepted. A check must be drawn on a U.S. or Canadian bank, be in U.S. dollars, and use a standard nine digit routing number

Preparer authorization

If the corporation wants to allow the North Dakota Office of State Tax Commissioner to discuss its 2015 tax return with the preparer who signed it, mark the circle in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Signature of Preparer" section of the corporation's return. It does not apply to the firm, if any, shown in that section.

If the circle is marked, the corporation is authorizing the North Dakota Office of State Tax Commissioner to contact the preparer to answer any questions that may arise during the processing of its return.

The corporation is also authorizing the preparer to:

- Give the North Dakota Office of State Tax Commissioner any information that is missing from the return;
- Call the North Dakota Office of State Tax Commissioner about the processing of the return or the status of any related refund or payment(s); and
- Respond to certain North Dakota Office of State Tax Commissioner notices that the corporation has shared with the preparer about math errors and return preparation. The notices will not be sent to the preparer.

The authorization will automatically end no later than the extended due date for filing the corporation's 2016 tax return.

The corporation is not authorizing the preparer to receive any refund check, bind the corporation to anything (*including any additional tax liability*), or otherwise represent the corporation before the North Dakota Office of State Tax Commissioner. If the corporation wants to expand the preparer's authorization, North Dakota Form 500, Authorization to Disclose Tax Information and Designation of Representative, will need to be signed and filed with our office. North Dakota Form 500 can be found on our website at www.nd.gov/tax. Click on Corporation Income and then Forms.

Overpayments

Overpayments of income tax may be applied to the 2016 estimated tax (*minimum \$5.00*) or issued as a refund (*minimum \$5.00*).

Interest and penalty

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

Interest:

If the full amount of the tax is not paid by the original due date, the following provisions for interest apply:

- If an extension was obtained, interest on the tax due during the extension period is computed at 12% per annum, through the extended due date. Beginning with the month thereafter, interest is computed at 1% per month or fraction of a month.
- If an extension was not obtained, interest on the tax due is computed at 1% per month or fraction of a month, except the month in which the tax became due.

Penalty:

- If the full amount of tax is not paid by the due date (*or extended due date*), penalty is equal to 5% of the unpaid tax due or \$5.00, whichever is greater.
- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

If there is an overpayment on Form 40, page 1, interest at the rate of 1% per month accrues on the overpayment beginning forty-five days after the later of:

- the due date of the return (*without extension*); or
- the date the return is filed.

Attachments and incomplete returns

A complete copy of the federal income tax return as filed with the IRS must be attached to Form 40.

All applicable lines on Form 40 must be completed. A return with incomplete lines or schedules or with notations such as “see attached statement” or “available upon audit” is not properly filed and may be returned to the taxpayer. An incomplete return that is returned will not be considered filed until resubmitted with the required items. For electronically filed returns, any attachments for extension forms or applicable schedules that are not included with the software **must** be attached as a PDF.

Ratios and decimals

On all schedules where a ratio or decimal is called for, use 6 digits after the decimal point.

To file or obtain additional forms and instructions

Completed returns and written requests for information and forms should be mailed to the Office of State Tax Commissioner, 600 E. Boulevard Ave., Dept. 127, Bismarck, ND 58505-0599.

If you have corporate income tax questions or are seeking tax forms, please e-mail us at corptax@nd.gov, visit our website at www.nd.gov/tax, or call our Corporate Tax Section at 701.328.1249.

For the speech or hearing impaired, call Relay North Dakota at 1.800.366.6888.

Information at the source

Any corporation doing business in North Dakota that is required to file a Federal Form W-2 or 1099 must also file one with this state. For more information on the requirements and alternatives for satisfying those requirements, contact our office.

Quick refund

A quick refund of overpaid estimated income tax may be requested by a corporation prior to filing a return if the expected overpayment exceeds five hundred dollars (\$500) and the claim for quick refund is filed after the close of the taxable year but before the 15th day of the fourth month thereafter.

The form for the Quick Refund Of Estimated Income Tax For Corporations (*Form 40-QR*) must be obtained by contacting our office.

Estimated tax payments

If a corporation's estimated state income tax liability exceeds five thousand dollars (\$5,000) **and** its previous year's state income tax liability exceeded five thousand dollars (\$5,000), the corporation is generally required to make an estimated tax payment of at least one-fourth of the amount due on each of four prescribed dates.

Information regarding estimated tax payments is located in the instructions for Form 40-ES.

Amended returns/federal audit changes

An Amended North Dakota Corporation Income Tax Return, Form 40X, must be filed if:

- North Dakota income is changed when an amended federal income tax return is filed or as a result of a federal audit.
- An error is discovered on a previously filed return.
- The corporation received a refund of federal income tax which was deducted on a previously filed Form 40 for tax years beginning before January 1, 2004.

Information about amended returns can be found in N.D.C.C. §§ 57-38-38 and 57-38-40.

Form 40X and instructions can be obtained by visiting our website at www.nd.gov/tax.

Federalization

The North Dakota income tax law is perpetually “federalized” for the Federal Taxable Income starting point of the North Dakota return.

Method of corporation taxation

The North Dakota corporation income tax applies only to that portion of a corporation's taxable income which is derived from or attributable to sources within this state.

A nonapportioning corporation, a corporation whose business activity is conducted solely within North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments.

An apportioning corporation, a corporation whose business activity is conducted both within and without North Dakota, computes North Dakota taxable income by adjusting its federal taxable income by North Dakota statutory adjustments and apportioning this adjusted taxable income using Schedule FACT or CR (*Part II*) of Form 40.

A corporation engaged in a unitary business with one or more corporations (*irrespective of the country or countries in which the corporations conduct business*) must file using the combined report method.

A unitary business is a group of corporations which carries on activities, the component parts of which transfer value among themselves through the unities of ownership, operation and use.

- “Unity of ownership” means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the single corporation owns, directly or indirectly, more than fifty percent of the voting stock of another corporation;
- “Unity of operation” means the group receives benefits from functional integration or economies of scale;
- “Unity of use” means the group of corporations contributes to or receives benefits from centralized management and policy formation.

Whether a group of corporations is engaged in a unitary business depends on the facts and circumstances of each case. If unity of ownership exists, any of the following facts or circumstances creates a presumption that the unities of operation and use exist; therefore, the corporations are engaged in a unitary business if:

- All activities of the group are in the same general line or type of business;
- The activities of the group constitute different steps in a vertically structured enterprise; or
- The group is characterized by centralized management.

Water's edge election

A corporation required to file its North Dakota return using the worldwide unitary combined report method may elect to use the water's edge method. The water's edge election must be made on the return as originally filed and is binding for five consecutive years. Also see Question #9 on page 2 of Form 40. **If the election is made, a corporation will be subject to a 3.5% surtax on its North Dakota taxable income.**

For the taxable years beginning prior to January 1, 2012, a domestic disclosure spreadsheet was required. However, for years after December 31, 2011, the requirement to file a domestic disclosure spreadsheet was repealed.

Specific instructions for Form 40, Page 1

Taxpayer Name

If filing a combined return (line 1, circle b or c) the return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.

If you previously filed a consolidated return (line 1, circle b1 or c1) as a member of a unitary group and are still a member of that group, use the same taxpayer name and federal identification number as previously filed returns. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2015.

Business Code

Enter the business code from the list found on our website at www.nd.gov/tax that most closely corresponds to the area from which you derived the majority of your income for the tax year.

Line 1 Income

Mark the circle for the reporting method used to complete the return and enter the income reportable under that method. **Mark ONE circle only.**

a. Single Corporate Entity

The single corporate entity method reports income or loss of only one incorporated business that is not part of a unitary business. (See item "Method of corporation taxation" on page 2.)

If the single corporate entity method is used for both North Dakota and federal purposes, enter the federal taxable income from Federal Form 1120, line 30.

If the single corporate entity method is used for North Dakota purposes and the corporation is included in a consolidated Federal Form 1120, enter the corporation's federal taxable income before consolidating adjustments/eliminations from:

- A pro forma separate company federal income tax return, line 30; or
- The by-company schedule showing gross income and deductions, which supports the consolidated federal taxable income.

Cooperatives and other organizations using federal forms other than Federal Form 1120 must enter the federal taxable income from the appropriate form.

b. Combined Report Method

For North Dakota corporation income tax purposes, a "combined report" means an income tax return on which the tax liability is computed using the methods described in N.D.C.C. chs. 57-38, 57-38.1 and N.D. Admin. Code chs. 81-03-05.1, 81-03-05.2, 81-03-05.3, and 81-03-09.

- Except for 100% North Dakota corporations required to file a consolidated tax return, it is essential to have a unitary business group of corporations before the combined report method can be used. For a discussion of a unitary business group of corporations, see item "Method of corporation taxation" on page 2.
- If filing a combined report method return where only one company apportions income to North Dakota (i.e., circle b or c is marked on Form 40, line 1), the answer to Question #8 on page 2 of Form 40 will be "No".
- If filing a consolidated combined report method North Dakota tax return where more than one company apportions income to North Dakota (i.e., circle b1 or c1 is marked on Form 40, line 1), the answer to Question #8 on page 2 of Form 40 will be "Yes".

Mark the "Combined Report Method" circle if Form 40 includes only one corporation from a unitary business which apportions its income to North Dakota.

The return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.

Complete Schedule WW on page 4 and enter the amount from line 11 on page 1, line 1. Attach the completed Schedule WW to Form 40 when filed.

Answer "No" to Question #8 on page 2 of Form 40.

Consolidated Return

For North Dakota corporation income tax purposes, a North Dakota "consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business or having sources of income from North Dakota.

- If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2015. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2015.
- Only taxpayers who compute their North Dakota tax liability using the combined report method may file a consolidated return.
- Laws and rules governing consolidated returns are found in N.D.C.C. ch. 57-38, and N.D. Admin. Code ch. 81-03-05.1.

- If filing a consolidated North Dakota tax return, circle b1 or c1 should be marked on Form 40, line 1.
- Because a North Dakota consolidated return reports the tax liability of more than one corporation, North Dakota Schedule CR, Parts I, II and III will be completed.
- If filing a consolidated North Dakota tax return (i.e., circle b1 or c1 is marked on Form 40, line 1) the answer to Question #8 on page 2 of Form 40 will be "Yes".

Schedule CR

North Dakota Schedule CR, Parts I, II and III will be completed **only** for corporations that are required to apportion income to North Dakota (i.e., if a corporation **does not have property, payroll, and/or sales in North Dakota**, it will not be listed on Schedule CR. However, the denominator of the apportionment factor computation on Part II will be the total property, payroll, and sales for all unitary companies in the combined group).

The Schedule CR in this booklet allows for three separate companies to be reported. If more companies are to be reported, photocopy Parts I, II and III of Schedule CR and continue to complete the additional schedule copies for companies that apportion their income to North Dakota. (See page 7 for specific instructions for Schedule CR.)

b1. Combined Report Method Consolidated Return

Mark the "Combined Report Method Consol. Return" circle if the corporation is filing one consolidated North Dakota return using the combined report method.

Two or more apportioning corporations **may** file one North Dakota consolidated return if the corporations are required to use the combined report method and more than one of the corporations has a filing requirement in North Dakota.

If circle b1 is marked:

1. If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2015. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2015.
2. Complete Schedule WW on page 4 and enter the amount from line 11 on page 1, line 1. Attach the completed Schedule WW to Form 40 when filed.
3. Complete North Dakota Schedule CR, Parts I, II and III only for companies that apportion income to North Dakota. If a corporation **does not have** property, payroll, and/or sales in North Dakota, it will not be listed on Schedule CR.
4. Answer "Yes" to Question #8 on page 2 of Form 40.

c. Water's Edge Method

Mark the "Water's Edge Method" circle if:

- The corporation is a member of a worldwide unitary business group of corporations, and
- The corporation elects to file a North Dakota tax return using the water's edge method, and
- No other corporations in the combined report have a filing requirement in North Dakota, if more than one, see c1 method below.

If circle c is marked:

1. The return should be filed using the taxpayer name and federal identification number of the entity having activity in North Dakota.
2. Complete Schedule WE on page 5 and enter the amount from line 13 on page 1, line 1. Attach the completed Schedule WE to Form 40 when filed.
3. Answer "No" to Question #8 on page 2 of Form 40.

c1. Water's Edge Method Consolidated Return

Mark the "Water's Edge Method Consolidated Return" circle if:

- The members of a worldwide unitary business group of corporations elect to file a consolidated tax return using the water's edge method, and
- If two or more apportioning corporations in the combined report have a filing requirement in North Dakota.

If circle c1 is marked:

1. If part of the same unitary group, file the return using the same taxpayer name and federal identification number as previously filed returns if that entity has activity in North Dakota in 2015. If not, file using the name and federal identification number of another affiliate having activity in North Dakota in 2015.
2. Complete Schedule WE on page 5 and enter the amount from line 13 on page 1, line 1. Attach the completed Schedule WE to Form 40 when filed.
3. Complete North Dakota Schedule CR, Parts I, II and III only for companies that apportion income to North Dakota.
4. Answer "Yes" to Question #8 on page 2 of Form 40.

d. Other

Mark the "Other" circle if the corporation has received written permission from the Office of State Tax Commissioner to file a North Dakota return using a filing method other than those specified above.

Other filing methods are contained in N.D.C.C. § 57-38.1-18 (for example, separate accounting or a method using an apportionment factor different from that computed on Schedules FACT or CR).

If the circle entitled "Other" is marked:

1. Attach a copy of the letter from the Office of State Tax Commissioner granting permission to use, or requiring the use of, this filing method.

2. Attach a worksheet substantiating and explaining the computation of income.
3. Enter the income from the worksheet on page 1, line 1.

Line 4**North Dakota apportionable income**

If completing Schedule CR, enter the amount from Form 40, page 1, line 4 on Schedule CR, Part I, line 4 (enter the same amount for each company) and complete Parts I, II and III of Schedule CR.

If a North Dakota consolidated tax return is being filed to report the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota:

1. **Do not** complete lines 5-19 of Form 40, page 1 until Schedule CR has been completed.
2. Complete Schedule CR, Parts I, II and III on pages 6, 7 and 8 and enter the totals on Form 40, page 1.
3. Complete Form 40, page 1.
4. Attach the completed Schedule CR to Form 40 when filed.

Line 5**Apportionment factor**

If a corporation has business income from activity solely within this state, enter 1.000000 on this line.

Corporations not filing a consolidated return, enter the apportionment factor from Schedule FACT, line 14.

Corporations completing Schedule CR must enter the apportionment factor from Schedule CR, Part II, line 15a.

It is required that the supporting schedule FACT or CR, Part II, whichever is applicable, be completed, and that the 6-digit factor from the supporting schedule be carried to page 1, line 5.

If the supporting schedule is not completed, the return will be considered incomplete and mailed back.

Financial Institutions

For any corporation that meets the definition of a financial institution, special apportionment provisions apply for the property and sales factors. These apportionment provisions are included in N. D. Admin. Code ch. 81-03-09.1 and are identical to the provisions that existed for financial institutions that were subject to the financial institution tax and filed Form 35 for years prior to 2013. Loans and receivables of a financial institution that are included in the property factor should be reported on the "Other assets" line and a supporting schedule should be attached. Please contact our office if there are questions regarding these special apportionment provisions.

Line 7**Income allocated to North Dakota**

Enter nonbusiness income allocated to North Dakota, less related expenses. Nonbusiness income is allocated to North Dakota if the income is attributable to North Dakota.

Expenses must be attributed to nonbusiness income in a manner which fairly distributes all of the corporation's expenses to its various types of income.

Corporations completing Schedule CR must enter the total nonbusiness income for all corporations having activity within North Dakota.

Line 9**Exemption for new and expanding business**

If the corporation received a new and expanding business exemption from the State Board of Equalization, enter the amount of exempt income computed pursuant to N.D. Admin. Code § 81-03-01.1-06. If line 4, page 1 is negative, do not enter an amount.

Corporations completing Schedule CR must enter the exempt income for each corporation having an exemption.

Attach a schedule showing the computation of exempt income for each corporation.

Line 10**Renaissance zone income exemption**

If the corporation is claiming exempt income as a result of the Renaissance Zone Act, enter the total amount of exemption from the summary part of Schedule RZ. Contact the Office of State Tax Commissioner at 701.328.1243 to obtain Schedule RZ. Attach Schedule RZ to Form 40 when filed.

Line 11**ND income after income exemptions**

If the amount on line 11 is a loss, the loss must be carried forward.

Line 12**North Dakota loss carryforward**

The North Dakota loss carryforward allowed on the Form 40 is the amount of the accumulated North Dakota loss less any previously deducted loss.

North Dakota net operating losses incurred in taxable years beginning after December 31, 2002 cannot be carried back to a previous taxable year. These net operating losses must be carried forward. Capital losses may still be carried back.

Attach a worksheet showing the accumulated loss, by year, less any previously deducted loss carryback or carryforward.

Corporations completing Schedule CR must enter the loss carryforward from all corporations listed on Schedule CR.

Line 14**Gross proceeds allocated to North Dakota from sale of North Dakota research tax credits**

Enter on this line the gross proceeds from the sale, assignment or transfer of unused North Dakota research tax credits. See the *2015 Corporate Income Tax Credits* booklet for more information.

Line 15**North Dakota taxable income**

If line 14 is zero enter the amount from line 13.

If line 13 is zero or less and line 14 is greater than zero, enter the amount from line 14.

If line 13 is greater than zero, enter the total of line 13 and line 14.

Line 21**Tax year 2015 estimated income tax payments**

Enter the total 2015 estimated income tax payments. Also, enter any 2014 overpayment credited to the 2015 taxable year and any payment voluntarily made to the state with an extension of time for filing.

Line 22**North Dakota income tax withheld on oil and gas royalties**

Enter the amount of North Dakota income tax withheld on oil and gas royalty payments that were reported to the company on a 2015 Form 1099-MISC. The amount to enter should only be income tax withheld and should not include any production or extraction taxes. Do not enter income tax withheld and reported on a K-1 received from a partnership. Income tax withheld on K-1 distributive income for a corporation is not allowed. In order to substantiate the amount withheld, a copy of the Form 1099-MISC must be attached or credit will not be allowed for the tax withheld. If the return is filed electronically, the Form 1099-MISC should be attached as a PDF.

Enter the amount of tax withheld for the company only if its FEIN is identified as the recipient on the Form 1099-MISC. If this return is a consolidated return, the amount to enter should also include any amount withheld on behalf of any corporation that is included in this return as identified by the recipient's FEIN on the Form 1099-MISC.

Income tax withheld on royalties received by a disregarded entity cannot be claimed. If income tax was withheld on a disregarded entity owned by a corporation, a corrected Form W-9 (to correctly identify the owner of the disregarded entity as the royalty owner) must be provided to the payer, and a corrected Form 1099-MISC identifying the corporate owner must be obtained.

If the company is filing with a tax year end other than a calendar year basis, it will claim withholding on the corporate income tax return for the year following the year of Form 1099-MISC. A taxpayer with a fiscal year end in 2016 will claim the amount withheld as shown on its 2015 Form 1099-MISC, and so on for each subsequent year and return.

Line 24a**Interest and penalty for balance due**

The Office of State Tax Commissioner will notify the taxpayer of any interest and penalty owed on tax due. If desired, interest and penalty may be computed by the taxpayer on tax due and entered on the return.

Interest:

If the full amount of the tax is not paid by the original due date, the following provisions for interest apply:

- If an extension was obtained, interest on the tax due during the extension period is computed at 12% per annum, through the extended due date. Beginning with the month thereafter, interest is computed at 1% per month or fraction of a month.
- If an extension was not obtained, interest on the tax due is computed at 1% per month or fraction of a month, except the month in which the tax became due.

Penalty:

- If the full amount of tax is not paid by the due date (*or extended due date*), penalty is equal to 5% of the unpaid tax due or \$5.00, whichever is greater.
- If the return is not filed by the due date (*or extended due date*), a penalty of 5% of the net tax liability or \$5.00, whichever is greater, applies for the month in which the return is due, with an additional 5% for each additional month (*or a fraction of a month*) during which the delinquency continues, not to exceed 25% of the net tax liability.

Line 24b**Interest on underpayment of estimated tax**

Instructions for making estimated tax payments are found at the back of this booklet. If estimated payments are not timely made or in the correct amount, interest is charged.

The amount of interest due for underpaid or late payments of estimated tax can be computed on North Dakota Form 40-UT. Enter the interest from Form 40-UT, line 9 on line 24b. Attach Form 40-UT to Form 40 when filed.

Line 25a**Amount to be credited to year 2016**

A corporation may elect to have the overpayment credited to their 2016 estimated tax. The overpayment will be credited to the first quarterly installment for 2016.

Specific instructions for Schedule SA**Additions****Line 3****All taxes measured by income deducted to arrive at federal taxable income**

Enter all taxes measured by income, including income taxes, franchise or privilege taxes measured by income (*paid to any taxing authority including a foreign country*) to the extent such taxes were deducted to arrive at federal taxable income.

Line 5**Contribution to endowment fund credit adjustment**

Enter the contribution made to an endowment fund that was deducted on your federal income tax return to the extent a credit has been claimed on Schedule TC, line 18.

Line 6**Contribution to housing incentive fund credit adjustment**

Enter the contribution made to a housing incentive fund that was deducted on your federal income tax return to the extent a credit has been claimed on Schedule TC, line 25.

Line 7**Domestic production activity deduction**

Enter the federal deduction allowable under IRC section 199, to the extent the deduction was taken to determine federal taxable income. This federal deduction is the "domestic production activities deduction".

Effective for taxable years ending after April 30, 2009, a cooperative that elects to pass the deduction through to its patrons allowable under Section 199 of the IRC does not include the amount passed through to its patrons in North Dakota taxable income. See N.D.C.C. § 57-38-01.3(1)(i) for further information.

Line 8**Other additions**

- **Safe harbor leases**
The safe harbor lease provisions in Section 168(f)(8) of the IRC of 1954, as amended, are not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts on line 8.
 - Seller/Lessee: sale proceeds, rent expense, amortization expense, lease acquisition cost.
 - Buyer/Lessor: interest expense, depreciation expense, amortization expense, acquisition cost, loss on sale of property.

See N.D.C.C. § 57-38-01(5)(a) for more information.

- **Real estate investment trusts**
Include on this line, the dividends paid deduction allowed by a captive real estate investment trust (REIT) on its federal income tax return and included in the taxpayer's federal taxable income. See N.D.C.C. § 57-38-01.3(1)(l) for further information. The dividends paid should be added back only to the extent they have not otherwise been included in apportionable income.
- **ACRS depreciation adjustment**
Enter the amount of depreciation deducted on the federal return for *all* currently held assets placed in service between January 1, 1981 and the end of the 1982 tax year using methods allowed under the IRC provisions in effect as of December 31, 1980. North Dakota income tax statutes did not allow for the use of ACRS depreciation for assets placed in service for 1981 and 1982 only and federal taxable income must be adjusted for the difference in these two methods. In computing this adjustment, exclude safe harbor lease adjustments.

A worksheet explaining any adjustment on this line must be attached.

Subtractions

Line 10

Tax refunds received in year 2015

Enter all income, franchise or privilege tax refunds received in 2015, to the extent such taxes were previously included in North Dakota taxable income.

Federal income tax refunds received cannot be included on this line.

Line 11

Interest on United States Obligations

Enter the following on this line:

- Interest income from U.S. obligations.
- Interest income from other securities that is specifically exempted from state income tax by federal statute.

Not all interest income from securities issued by federal government agencies is includable on this line. Examples of interest income not includable on this line are from certain mortgage backed securities of the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and interest received from a federal tax refund.

Lines 12 and 13

Allocated income and related expenses

Enter all nonbusiness income on line 12 and enter related expenses on line 13. The method used to attribute expenses to nonbusiness income must fairly distribute all of the corporation's deductions to all of its various types of income.

If an entry is made, all of the following must be attached to Form 40:

- A worksheet showing each type of income or loss item allocated and its amount;
- Documentation showing the state to which the item of income or loss was allocated (*a copy of the other state's tax return is preferred*); and
- A narrative explaining the reasons for allocating each item of income or loss.

Line 15

IC-DISC distributions

Enter the actual distributions made by a corporation who elects to be an interest-charge domestic international sales corporation, elects to use intercompany pricing rules under IRC § 994, and is owned by one or more individuals or passthrough entities. Answer "Yes" to Question #4 on page 2 of Form 40.

Line 16

Other subtractions

Do not include intercompany eliminations on this line when filing a combined report (filing methods b, b1, c or c1). Report all intercompany eliminations on Schedule WW line 10 or Schedule WE line 6.

- **Eminent domain sale or transfer**
If the amount on Form 40, page 1, line 1 includes any gain, either ordinary or capital, from property subjected to eminent domain sale or transfer, such gain is not taxable and must be entered on this line.
- **Safe harbor leases**
The safe harbor lease provisions in Section 168(f)(8) of the IRC of 1954, as amended, are not adopted in North Dakota in those instances where the minimum investment by the lessor is less than one hundred percent (100%). Enter amounts on line 16.
 - Seller/Lessee: interest income and depreciation expense (*for assets placed in service between January 1, 1981 and the end of the 1982 taxable year, use methods allowed under the IRC as of December 30, 1980. For assets placed in service after the 1982 taxable year, use ACRS depreciation*).
 - Buyer/Lessor: rental income.
- **Regulated investment companies**
Regulated investment companies, as defined by the IRC, will be allowed to subtract on this line certain dividends paid to shareholders. The dividends paid must be attributable to income that is taxable under N.D.C.C. ch. 57-38 when the regulated investment company earns the income.
- **North Dakota railway bonds**
Enter the amount of interest on bonds issued by a regional railway authority in North Dakota.
- **ACRS depreciation adjustment**
Enter the amount of depreciation deducted on the federal return for *all* currently held assets placed in service between January 1, 1981 and the end of the 1982 tax year using methods allowed under the IRC provisions in effect as of December 31, 1980. North Dakota income tax statutes did not allow for the use of ACRS depreciation for assets placed in service for 1981 and 1982 only and federal taxable income must be adjusted for the difference in these

two methods. In computing this adjustment, exclude safe harbor lease assets.

A worksheet explaining any adjustment on this line must be attached.

Specific instructions for Schedule TC

Lines 1 through 3

Nonprofit private school tax credit

Tax credits are allowed for contributions to qualifying nonprofit private primary, secondary and higher education schools located in North Dakota. A separate credit is allowed for each category of school. To qualify, a contribution must be made directly to or specifically designated for the exclusive use of a qualifying school. If a contribution is made to an account, fund, or entity benefiting both qualifying and nonqualifying schools, it qualifies for the credit only if the entity provides the donor with a statement showing the amount specifically designated for the use of the qualifying school.

If a contribution is made to a qualifying school that provides education in one or more grades in both the primary school category (K through 8th grades) and secondary school category (9th through 12th grades), a separate credit is allowed for the amount contributed to each category of school. Unless the school provides the donor with a statement showing the amount specifically designated for the use of each category of school, one-half of the contribution will be deemed to have been made to each category of school. A corporation may elect to treat a contribution as having been made during a tax year if made on or before the due date, including extensions, for filing Form 40 for that tax year.

The credit allowed for each category of school equals the lesser of (1) 50% of the contributions made to eligible schools within the category (2) 20% of the corporation's total income tax due, or (3) \$2,500.

Enter on line 1 the credit for nonprofit private colleges. Enter on line 2 the credit for nonprofit private high schools. Enter on line 3 the credit for nonprofit private primary schools.

For each contribution, attach a copy of a receipt from the nonprofit private institution or a copy of a cancelled check (*front and back*).

Lines 4-27

Instructions for the following tax credits can be found on our website at www.nd.gov/tax.

Line 4. Geothermal, solar, wind, biomass energy device credits (prior to January 1, 2015).

Line 5. Wind energy device credit generated after December 31, 2014.

Line 6. Employment of the individuals with developmental disabilities or chronically mentally ill credit.

Line 7. Research and experimental expenditure credits generated by taxpayer.

Line 8. Research and experimental expenditure credits purchased by taxpayer.

Line 9. Wage and Salary credits for a new industry.

Line 10. Payment to a certified nonprofit development corporation credit.

Line 11. Renaissance Zone credits.

Line 12. Biodiesel or green diesel fuel production credit.

Line 13. Soybean and canola crushing equipment costs credit.

Line 14. Seed capital business investment credit.

Line 15. Biodiesel or green diesel fuel blending credit.

Line 16. Biodiesel or green diesel fuel sales equipment costs credit.

Line 17. Agricultural commodity processing facility investment credit.

Line 18. Endowment fund contribution credit.

Line 19. Microbusiness investment and employment credit.

Line 20. Internship employment credit.

Line 21. Angel fund investment credit.

Line 22. Angel fund investment credit purchased carried forward.

Line 23. Workforce recruitment credit.

Line 24. Wages paid to a mobilized military employee credit.

Line 25. Housing incentive fund credit.

Line 26. Automation manufacturing equipment purchase credit.

Line 27. Contributions to Rural Leadership ND scholarship program credit.

Specific instructions for Schedule CR

Schedule CR is a worksheet to compute the North Dakota tax liability of multiple nexus companies in one unitary group on one North Dakota "consolidated" return. The tax liabilities are computed for each company apportioning its income to North Dakota, added together, and the total carried to page 1 of the Form 40. Before you begin to complete the CR schedules, you must complete lines 1-4 of Form 40 page 1. Each company separately listed on Schedule CR, including those with a zero apportionment factor, will be considered a taxpayer for purposes of having filed a return.

Schedule CR has three parts:

Schedule CR, Part I calculates the tax liability of each company.

- Line 4 - Enter the amount from Form 40, page 1, line 4 (*enter the same amount for each company*).

Schedule CR, Part II calculates the North Dakota apportionment factor for each nexus company.

- Each company computes its separate North Dakota apportionment factor using the total everywhere property, payroll, and sales of the entire unitary group for the denominators. Each company uses its own separate North Dakota property, payroll, and sales as the numerator.

- Line 5 - Enter the factor as calculated for each company on Schedule CR Part II, line 15.

Schedule CR, Part III reports the tax credits available for each company.

- The tax credits are calculated for each company and totaled on Line 28. The total is carried to line 19 of Schedule CR, Part I. After all tax credits are reported on Schedule CR, Part III, each tax credit is totaled for all companies and reported on Schedule TC on page 4.

After Schedule CR has been completed and each separate company that apportions its income to North Dakota has computed its North Dakota tax liability and net income tax due, Form 40, page 1 lines 5-20 are completed as follows:

1. Copy the apportionment factor from Schedule CR, Part II, line 15a to line 5, page 1.
2. Add together all the separate companies' amounts for lines 6 through 19 on Schedule CR, Part I and copy the total of each line for all companies to the corresponding line on page 1.
3. Complete Schedule TC. The total credits for all companies included on Schedule CR must equal the credits reported on Schedule TC.
4. Copy the amount from Schedule CR, Part I, line 20a to page 1, line 20.

Attach the completed Schedule CR to Form 40 when filed.

Taxpayer Bill of Rights

You may obtain a copy of the North Dakota Taxpayer Bill of Rights by contacting the Office of State Tax Commissioner or visiting our web site at www.nd.gov/tax

Need forms or assistance?

If you need a North Dakota form or schedule, or if you have a question about preparing your North Dakota return . . .

Call

Questions: 701.328.1249
Forms Requests: 701.328.1243

If speech or hearing impaired,
call us through Relay North Dakota: 1.800.366.6888

Visit our web site

On our web site, you will find the following resources:

- Tax forms
- Electronic payment information
- Income tax statutes and regulations
- Calendar of due dates, public meetings, and workshops
- Press releases
- On-line message service

Our web site address is:

www.nd.gov/tax

Come in to see us

Stop in to see us in person at our office in Bismarck.
You will find us in the—

Corporate Income Tax Section
State Capitol, 16th Floor
Monday through Friday
8:00 a.m. to 5:00 p.m.

Write

Office of State Tax Commissioner
600 E. Boulevard Ave. Dept. 127
Bismarck, ND 58505-0599

E-mail us

Request forms, ask us a question, or send a message to us via e-mail at:
corptax@nd.gov

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You may fax your request or question to
701.328.1942